

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DEBRA KAY LONG,

Plaintiff,

v.

**CIVIL ACTION NO. 1:20CV201
(Judge Keeley)**

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 30],
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 20],
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 22],
AND REMANDING CIVIL ACTION TO COMMISSIONER**

On August 13, 2020, the plaintiff, Debra Kay Long ("Long"), filed a complaint against the Commissioner of the Social Security Administration ("Commissioner") seeking review of the Commissioner's final decision denying her application for disability insurance benefits and supplemental security income (Dkt. No. 1). In accord with 28 U.S.C. § 636 (b) and L.R. Civ. P. 9.02, this action was referred to United States Magistrate Judge Michael J. Aloï for initial review.

In a Report and Recommendation ("R&R") entered on December 28, 2021, Magistrate Judge Aloï recommended that the Court grant Long's motion for summary judgment (Dkt. No. 20) and deny the Commissioner's motion for summary judgment (Dkt. No. 22). Following a careful review of the record, he concluded that the

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Administrative Law Judge ("ALJ") had erred by (1) failing to consider Long's credible mental limitations in determining her Residual Functional Capacity ("RFC"), and (2) classifying her past relevant work as "light as actually performed." (Dkt. No. 30 at 28). Because these errors were not harmless and frustrated meaningful review, Magistrate Judge Alois concluded that this case should be remanded to the ALJ for reconsideration of these issues.

The R&R informed the parties of their right to file "written objections identifying the portions of the Report and Recommendations to which objection is made, and the basis for such objection." Id. It further warned that failure to do so would result in waiver of the right to appeal. Id. at 15-16. Despite receipt of the R&R, neither party filed objections to the recommendation.

"The Court will review de novo any portions of the magistrate judge's Report and Recommendation to which a specific objection is made...." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). The Court will uphold those portions of a recommendation to which no objection has been made unless they are "clearly erroneous." See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). Failure to file specific

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objections waives appellate review of both factual and legal questions. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984); see also Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

Having received no objections to the R&R, the Court has no duty to conduct a de novo review of Magistrate Judge Aloï's findings. Therefore, following its review of the R&R and the record for clear error, the Court:

1. **ADOPTS** the R&R (Dkt. No. 30);
2. **GRANTS** the Long's Motion for Summary Judgment (Dkt. No. 20);
3. **DENIES** the Commissioner's Motion for Summary Judgment (Dkt. No. 22); and
4. **REMANDS** this civil action to the Commissioner for further action in accordance with this Order and Magistrate Judge Aloï's R&R.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record.

DATED: January 20, 2022

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE